

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Southern District of New York
Name <i>(under which you were convicted)</i> : Ross William Ulbricht	Docket or Case No.: 1:14-cr-00068-1
Place of Confinement:	Prisoner No.: 18870-111
UNITED STATES OF AMERICA Movant <i>(include name under which convicted)</i> <div style="text-align: center;">V. Ross William Ulbricht</div>	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
U.S. District Court for the Southern District of New York

 (b) Criminal docket or case number (if you know): 1:14-cr-00068
2. (a) Date of the judgment of conviction (if you know): 6/1/2015
 (b) Date of sentencing: _____
3. Length of sentence: Life
4. Nature of crime (all counts):
 21 USC 841A=CD.F Aiding and Abetting Distribution of Drugs
 21 USC 848.F Continuining Criminal Enterprise
 18 USC 1030A.F Computer Hacking Conspiracy

5. (a) What was your plea? (Check one)
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: Second Circuit Court of Appeals
- (b) Docket or case number (if you know): _____
- (c) Result: Affirmed
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): 17-950
- (2) Result: Petition for writ of certiorari denied
- (3) Date of result (if you know): 6/28/2018
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

- (4) Nature of the proceeding: _____
- (5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Advising client against entering a guilty plea that would have limited his potential sentencing exposure and avoided a sentence of life imprisonment was ineffective assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Before his trial, the Government offered Ulbricht a plea deal. The Government's offer required Ulbricht to plead guilty to an information containing federal narcotics violations. Under the terms of the deal, Ulbricht faced a statutory range of 10 years to life imprisonment. The Government made it clear that they were free to seek a sentence of life imprisonment, even if Ulbricht accepted the deal. Trial counsel advised Ulbricht to reject the deal and proceed to trial because, according to trial counsel, Ulbricht risked nothing: even if he went to trial and lost, Ulbricht would be in no worse position at sentencing. Ulbricht took his trial counsel's advice and rejected the plea offer even though the evidence against him was overwhelming. After Ulbricht rejected the plea agreement, the government filed an indictment that increased the mandatory minimum to 20 years due to the existence of a Continuing Criminal Enterprise charge. ("CCE"). Later, a superseding indictment was filed that added three additional charges. Trial counsel's advice to Ulbricht constituted ineffective assistance of counsel. But for trial counsel's mis-advice to Ulbricht, there is a reasonable probability that he would have accepted the plea offer and the outcome of the proceedings would have been different. Additionally, see forthcoming memorandum of law and declarations in support of the same.

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are more appropriately reserved for collateral review

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: If The Court Were To Conclude The Original Plea Offer Was Not A "Firm" Offer, Ulbricht's Counsel Was Ineffective For Not Advising Ulbricht To Enter An Open Plea To The Original Indictment

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See facts provided in support of Ground One and incorporated here by reference. While Ulbricht respectfully submits that the Government's original plea offer was a firm offer, to the extent the Court concludes that it was not, Ulbricht alternatively argues that his counsel was ineffective for failing to advise him to enter an open plea to the original Indictment. While the penalties resulting from the original Indictment were severe, for all of the reasons discussed already, there is a reasonable probability the Court would have sentenced Ulbricht to less than life in prison had he pleaded guilty in the case. Ulbricht would have pleaded guilty to the first indictment rather than go to trial but for his attorney's misadvice about the risks of proceeding to trial versus pleading guilty. It is reasonably probable that the outcome of the proceedings would have been different but for counsel's professionally unreasonable advice. Additionally, see forthcoming memorandum of law and declarations in support of the same.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are more appropriately reserved for collateral review

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Counsel was ineffective in violation of the 6th Amendment by conceding all the essential elements of the offense, pleading Ulbricht guilty with no benefit

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Shortly after the jury was empaneled, however, counsel conceded Ulbricht's guilt with respect to the most consequential offenses in the indictment. He did so without consulting with Ulbricht and ultimately deprived him of any opportunity to avoid a life sentence. The result was a proceeding where trial counsel altogether failed to subject the prosecution's case against to adequate adversarial testing. Counsel decided to concede guilt as to these crimes anyways, thereby guaranteeing Ulbricht's conviction on the most consequential offenses and the very life sentence he sought to avoid by rejecting the government's plea offer. Trial counsel conceded in his Opening Statement that Ulbricht had created and run the Silk Road website for a few months. That concession essentially constituted Ulbricht's admission of guilt. Trial counsel conceded that Ulbricht created and ran the Silk Road. Stipulations were entered into where counsel agreed that numerous Silk Road vendors sold and delivered controlled substance. There is a reasonable probability that but for counsel's unreasonable performance in this manner that the outcome of the proceedings would have been different. Ulbricht incorporates the facts alleged in Ground One and Two by reference. Additionally, see forthcoming memo of law and declarations in support of the same.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance are more appropriately reserved for collateral review

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court’s decision:

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

GROUND FOUR: When counsel conceded guilt Ulbricht's right to counsel and autonomy was violated which was structural error requiring reversal of convictions.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial counsel usurped Ulbricht’s control over the objective of his defense, which was to rely on the presumption of innocence and put the government to its proof, when counsel conceded Ulbricht’s guilt, which is what his Opening Statement (and later stipulations to drug evidence) accomplished. Trial counsel conceded Ulbricht’s guilt without Ulbricht’s understanding or consent because Ulbricht was led to believe that counsel’s actions were still consistent with his strategy to contest Ulbricht’s guilt. See facts from Ground One, Two and Three. Also, see forthcoming memo of law and declarations in support

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Reserved IAC for collateral review.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Yes, 1-4. Claims of this type are more appropriately reserved for collateral review.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Supreme Court denied certiorari on June 28, 2018. Motion is timely.

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

/s/ Zachary Lee Newland
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ .
(month, date, year)

Executed (signed) on _____ (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Attorney for movant